IN THE HIGH COURT OF UTTARANCHAL, NAINITAL

NO. 10- COURT'S ORDER WHETHER THE CASE IS OR NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2) (b)]

Criminal Misc. application No. 94/2001

Kripal Singh Nayal and others ..Applicants.

Vs.

Kumaun Ki Awaj, Newspaper and another .. Opp. Parties

Decided on 4-7-2006

A.F.R. (Approved for Reporting)

Not approved for reporting

Date:- 04-7-2006 **(B.C. Kandpal, J.)**

In The High Court of Uttaranchal, at Nainital.

Criminal Misc. Application No. 94/2001
(Old No. 6663/1991)

Kripal Singh Nayal and 35 others... Applicants.

Versus

Kumaun Ki Awaj, Newspaper through its Proprietor cum Manager Dr. Kirdesh Deepali Almora and another ... Opp. Parties.

Sri C.D. Bahuguna, Advocate for the applicants.
Sri Dinesh Chauhan, learned counsel for the O.P. No.1.
Learned A.G.A. for the State.

Hon'ble B.C. Kandpal, J.

This application U/S 482 Cr.P.C. has been filed by the Principal, Teachers and other Staff of Government Inter College, Almora for quashing the complaint dated 30th May, 1990, contained in Annexure No. 3 to this petition, as well as the order dated 3-4-1991, contained in Annexure-4 to the petition, passed by Munsif Magistrate in Criminal Case No. 292/1990 Dr. Hirdesh Deepali Vs. Bahadur Singh Mehta and others U/S 500/501 I.P.C.

2- Brief facts of the case are that a Newspaper named "Kumaun Ki Aawaj" is in circulation of District Almora and Dr. Hirdesh Deepali is its proprietor-cum-Editor. A news item was printed and published under the title " छुरेबाज छात्रों के छापामार प्रधानाचार्य " in the Newspaper. The principal and the other staff of the college after the publication of the aforesaid article passed a resolution condemning the publication of the said article and in the form of letter the resolution was sent to the Editors of various Newspapers for printing and publication and the copy of the said letter was also

sent to the District as well as Education Authorities. The copy of the letter sent by the Principal and other staff of the College is contained as Annexure- 2 to this petition. After the publication of the said condemnation-cum-explanation, the proprietor-cum-editor of the Newspaper "Kumaun ki Aawaj" filed a complaint against the principal and the other staff of the College involving them in a defamation case. The complaint was filed in the court of Chief Judicial Magistrate, which was subsequently transferred to the court of Munsif Magistrate Almora, who on 3-4-1991 passed an order summoning the petitioners to face the trial.

3- Feeling aggrieved by the aforesaid order the petition U/s 482 Cr.P.C. has been filed for quashing the proceedings of the case as well as the order dated 3-4-1991 passed by the Munsif Magistrate, Almora.

4- I have heard Sri C.D. Bahuguna, learned counsel for the petitioners, Sri Dinesh Chauhan, learned counsel for the O.P. No.1 and the learned A.G.A. for the State.

5- The complaint has been filed after a period of 8 months from the date of publication of condemnation item.

6- As per the provision of Section 499 I.P.C. the word "defamation" is reproduced as below:-

> "Whoever by words; either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm,

the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person."

7- The aforesaid definition prescribes that there are three essential ingredients-

(a) making or publishing any imputation;

(b) concerning any person, and

(c) intending to harm the reputation of such person.

Therefore, the ingredients of Section 499 I.P.C. are fulfilled if one has made imputation concerning any person and such imputation was made intending to harm the reputation of such person.

8- Further explanation-4 of Section 499 I.P.C. runs as follows-

"No imputation, is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in loathsome state, or in a state generally considered as disgraceful."

9- This explanation provides that an imputation can become actionable only when it prima facie lowers that moral and intellectual character in respect of his caste or his calling or lowers the credit in the estimation of others.

10- In the instant case the news item which is contained as Annexure-4 to this application indicates

that the petitioners have not made any imputation against any individual in the news item but simply condemned the article published in the Newspaper "Kumaun Ki Aawaj".

11- The Ninth Exception of Section 499 I.P.C., reads as follows-

"It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good"

In case if the aforesaid Exception is taken into consideration then it is quite clear that the petitioners cannot be prosecuted for any alleged offence of defamation, as the aforesaid Ninth Exception extends this protection even to such person who has made any imputation on the character of another, provided such imputation was made to protect one's interest or the interest of other persons or for the public good.

12- In view of the aforesaid, I come to conclusion that the complaint filed by the O.P. No.1 U/Ss 500/501 I.P.C., is liable to be quashed, as it does not contain the essential ingredients of Section 499 I.P.C. The Magistrate, while passing the impugned summoning order dated 3-4-1991 also overlooked the essential ingredients of Section 499 I.P.C., therefore, the order passed by the Magistrate concerned, summoning the petitioners, is also liable to be set-aside.

13- For the reasons stated above, the petition is allowed. The criminal proceeding in complaint case No.

292/1990, U/Ss 500/501 I.P.C. is hereby quashed. Accordingly the order dated 3-4-1991, passed by the Munsif Magistrate, Almora summoning the petitioners, is set aside.

(B.C. Kandpal, J.)

Dated: 04-07-2006
ISB